IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.70 of 2006

IN

Writ Petition No.5382 of 2005

M/s Darshan Developers ...Appellants

V/s

Tarabaug Aikyavarhak Co Op

Hsg Scy Ltd and Or. .. Respondents

Mr.J.Reis with R.R.Goenka i/b M/s Goenka Law Associates for Appellants

Shri C.J.Sawant i/b Y.M.Chaudhary for Respondent no.1

Shri A.J.Bhor for Respondent no.7

Shir R.M.Patne AGP for Respondent nos.6,8 and 9

WITH

LETTERS PATENT APPEAL NO.17 of 2006

In

Writ Petition No.5382 of 2005

Tarabagug Aikyavardhak Co Op

Hsg Scy Lt. .. Appellants

V/s

Dinesh Kantilal Panchal

and Ors. ... Respondents

Shri C.J.Sawant Sr Counsel i/b Yadunath Chaudhari for Appellants
Shri J.B.Chinoy i/b Y.E.Moomin for Respondent nos 1 to 4
Shri R.M.Patre,AGP for Respondent nos. 5, 7 and 8
Shri Bhor for Respondent no.6

CORAM: R.M.S.KHANDEPARKAR &
S.R.SATHE,JJ.
DATED:18th April 2006

P.C.:-

. Heard.

2. The Appellants challenge the order dated 16-12-2005 passed in Writ Petition No.5382 of 2005 whereby the learned Single Judge has granted stay to the order dated 3-2-2003 by the Government whereby the Government had sought to levy retrospectively repair cess in relation to the Petitioners' society building.

3. The learned Single Judge while granting the said stay has clearly observed that prima facie he is of the view that the action on the part of the Government to pass such order retrospectively and thereby to grant benefit of higher FSI for redevelopment is

unsustainable. The impugned order also discloses that taking into consideration the fact and circumstances of the case the learned single Judge has already posted the matter for final hearing. In fact, it was posted for hearing on 6-2-2006, but could not be taken up on account of some unavoidable circumstances.

4. The impugned order is sought to be challenged on various grounds. However, it is not necessary to go into details of all those grounds. It is also submitted on behalf of the Appellants that the Appellants are entitled to carry on construction by using the higher FSI irrespective of the fact whether the order dated 3-2-2003 is in force or not. It is not necessary for us to express any opinion in this behalf; suffice to point out that by the impugned order the learned single Judge having prima facie found that the repair cess cannot be levied retrospectively has granted the stay to the order dated 3-2-2003 and considering the nature of levy by the Government, there is hardly any scope to interfere in the said finding given by the learned single Judge and that too with the finding which has been arrived at interim stage. Besides, the learned single Judge having himself considered the matter to be disposed of on merits expeditiously and had even fixed the matter for final hearing on 6-2-2006, in such circumstances it would not be appropriate to interfere with the impugned order by way of L.P.A.. Rather it would be more

appropriate to allow the learned single Judge to deal with all the issues which are sought to be raised in the matter without expressing any opinion on any such issue in appellate jurisdiction. Since the matter is at writ large in respect of all the issues before the learned single Judge, we do not consider it appropriate to deal with these issues in appellate jurisdiction. As rightly observed by the learned single Judge the matter should be heard as expeditiously as possible, more particularly in view of undisputed fact that construction activity had already started in the year 2003 and the same is in progress and the petition was filed only in the year 2005. Even so, the learned single Judge is requested to take up the matter for final hearing as expeditiously as possible and possibly within a period of 3 months from today.

5. With these observations, we do not find any justification for interference in the impugned order at this stage and therefore the appeals hereby stand disposed of with the said request to the learned single Judge without expressing any opinion on any of the contentions raised in the matter and all issues being kept open for adjudication by the learned single Judge.

(S.R.SATHE,J) (R.M.S.KHANDEPARKAR,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 12 OF 2006

In

L.P.A.No.17 of 2006

In

Writ Petition No.5382 of 2005

M/s Darshan Developers .. Applicant

V/s

Tarabaug Aikyavardhak Co Op Hsg Scy and Ors. .. Respondents

WITH

Civil Application No.13 of 2006

In

Letters Patent Appeal No.5382 of 2005

Tarabaug Aikyavardhak Co Op Hsg Scy Ltd .. Applicants

V/s

Dinesh Kantilal Panchal and Ors. .. Respondents

Shri C.J.Sawant Sr.Counsel i/b Yadunath M.Chaudhari for Applicants

Shri J.B.Chinoy i/b Y.E.Moomim for Respondent nos.1 to 4

Shri R.M.Patre AGP for Respondent nos. 5, 7 and 8

Shri Bhor for Respondent no.6

CORAM:R.M.S.KHANDEPARKAR &

S.R.SATHE,JJ

DATED:18th April 2006

P.C.:-

. In view of the disposal of Letters Patent Appeals Nos. 17 of 2006 and 70 of 2006 these Civil Applications do not survive and stand disposed of.

(S.R.SATHE,J.) (R.M.S.qKHANDEPARKAR,J)